UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JEFF RAGAN, et al.,

Plaintiffs,

v.

COUNTY OF HUMBOLDT DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.,

Defendants.

Case No. 16-cv-05580-RS

ORDER GRANTING MOTION TO DISMISS

I. INTRODUCTION

This action arises out of the removal of a minor child, J.H., from the custody of her former legal guardians and prospective adoptive parents, Plaintiffs Jeff and Janine Ragan. The state court conducted a juvenile dependency proceeding and decided J.H. should be removed from her guardians' custody and placed in the care of Humbolt County. Plaintiffs appealed that decision to the California Court of Appeal but failed to file an opening brief, so the appeal was dismissed. Plaintiffs then filed this action asserting various constitutional violations and state law torts arising out of the agency adoption process, the removal of J.H. from their custody, and the state court dependency proceedings. Defendants move to dismiss or, alternatively, for summary judgment. For the reasons discussed below, Plaintiffs' constitutional claims are barred, at least in part, by the *Rooker-Feldman* doctrine and otherwise fail to state a claim for relief. The complaint is thus dismissed with only limited leave to amend.

II. BACKGROUND

A. Factual Background[1]

Plaintiffs are prospective adoptive parents to two minor children, J.H., a 16 year old girl, and J.P., a 14 year old boy. The children are siblings. In 2004, Humbolt County, through the Department of Health and Human Services, placed the children into Plaintiffs' custody. In 2005, Plaintiffs were granted permanent legal guardianship of the children. In 2009, Plaintiffs contacted the California Department of Social Services regarding formal adoption. That year, Humbolt determined that the children were eligible for the Adoption Assistance Program ("AAP"), which would provide funding to assist with their care and well-being. From 2009 through 2011, Plaintiffs worked with Keri Schrock, a Humbolt employee, to satisfy the requirements for an agency adoption. In 2010, Plaintiffs completed their home study for adoption.

In July 2011, Schrock began communicating legal positions "that mischaracterized the adoption process options or otherwise misrepresented the legal avenues for adoption available to Plaintiffs." Comp. ¶ 31. For example, she told Plaintiffs they could proceed with an agency adoption only if the minor children were made dependents of the County, which would require Humbolt to offer reunification services with the children's biological mother, Maureen Henderson. (The biological father, Stephen Parr, formally relinquished his parental rights to the County in April 2011.) Schrock also told Plaintiffs that they could not legally continue with the agency adoption without Henderson's termination of parental rights, so they had either to apply for independent adoption, and lose any opportunity of AAP funding, or negotiate an agreement with Henderson. Plaintiffs alerted Schrock to their understanding that permanent legal guardians can seek termination of parental rights where adoption is in the best interests of the minor child. She never responded.

In 2013, J.H. began struggling with emotional issues, and the family began therapy. On January 15, 2015, J.H. ran away from home. She was found that day and taken to a local mental

[1] The factual background is based on the averments in the complaint, which must be accepted as true at this stage, as well as state court records properly subject to judicial notice.

health crisis center in Santa Rosa. There, she was tentatively diagnosed with depression and various personality disorders and referred to residential treatment. Plaintiffs contacted California Department of Social Services to inquire if AAP funding could be used to help cover the cost of residential treatment. On January 26, 2016, Adoptions Specialist Carolyn Perkins, an employee of that department, sent Plaintiffs a letter stating that an agency adoption was appropriate in order to access AAP funding for J.H.'s medical needs.

In February 2015, Plaintiffs contacted Schrock to discuss options for funding J.H.'s residential treatment program. Schrock recommended they relinquish guardianship of J.H. and then seek for J.H. to be placed in their home as a non-relative extended family member. On March 30, 2015, J.H. was released from psychiatric care as the available insurance would not cover any further treatment. In May 2015, Schrock performed a bi-annual guardianship home visit and no problems were noted. In July 2015, a juvenile dependency court ordered that Henderson's rights be terminated. Plaintiffs transmitted this order to Schrock and requested adoption through the County. They also requested an immediate update to the previous home study because the home study from 2010 was only valid for five years and would expire in September 2015. In August 2015, Plaintiffs filed for agency adoption. Schrock took no immediate action. In October 2015, the County notified Plaintiffs that they were ineligible for agency adoption, but advised they could proceed with an independent adoption, which would eliminate the possibility of AAP funding.

In November 2015, the juvenile dependency court ordered the County to grant an agency adoption, complete an abbreviated home study no later than December 22, 2015, and grant AAP funding to Plaintiffs. In December 2015, the County reported that they lost the original home study and Plaintiffs' entire file. Humbolt also represented to the juvenile dependency court that it tried to speak with the minor children at Plaintiffs' residence but Plaintiffs denied them access.

On January 4, 2016, Mr. Ragan underwent hip surgery. On January 7, 2016, J.H. threatened suicide and was placed in an adolescent hospital in San Francisco. She was released from the hospital on January 10, 2016. The County contacted Plaintiffs and informed them that if

they did not pick up J.H. from the adolescent hospital immediately, they would be charged with neglect. Plaintiffs did not pick up J.H. because of Mr. Ragan's recent hip surgery and because they could not care for her in a mental health crisis. J.H. spoke with Ann Seaquist, a social worker, who told her that Plaintiffs were being investigated for neglect. On January 15, 2016, J.H. was taken into custody and placed in foster care. Plaintiffs were charged with severe emotional abuse, neglect, and abandonment. On or about February 24, 2016, the County dropped those charges, and agreed to perform an abbreviated home study for Plaintiffs to proceed with the agency adoption.

B. Juvenile Dependency Proceedings

In California, dependency proceedings in the juvenile court are special proceedings governed by their own set of rules as set forth in the Welfare and Institutions Code ("WIC"). *See Belinda K. v. Baldovinos*, No. 10–CV–02507–LHK, 2012 WL 464003, at *1–2 (N.D. Cal. Feb. 13, 2012). Section 300 of the WIC describes situations that will bring a child within the jurisdiction of the juvenile court for dependency proceedings. A dependency proceeding may be initiated when the Department of Child and Family Services files a petition attesting that the child falls within the scope of WIC § 300. Upon the filing of a petition, the juvenile court holds a detention hearing to determine whether the child requires emergency removal from the home, followed shortly thereafter by a jurisdictional hearing to determine whether the allegations in the petition are true, in which case the child is declared a dependent of the juvenile court. If the court finds that it has jurisdiction over the child under WIC § 300, it then conducts a disposition hearing to determine whether the child may remain in the home under court supervision, or whether the child must be removed from the home, requiring "family reunification services" for twelve months after the child enters foster care. *See id.* (citing WIC §§ 358, 361.5(a)(1)(A), 362). The juvenile court continues to monitor the family's progress on the case plan by holding status review hearings every six months. *See id.* (citing WIC § 366(a)(1)). If by the twelve month review the court does not return the child, and if the court further determines by clear and convincing evidence that reasonable reunification services have been provided or offered to the parents but that there is no

substantial probability of return within 18 months of removal, then WIC § 366.26 requires the court to terminate reunification services and set the matter for a permanency hearing. *See id.* (citing WIC §§ 366.21, 366.26). At that hearing, the court selects and implements a permanent plan. *See id.* (citing WIC § 366.26).

Here, Humbolt filed a petition, on behalf of J.H., requesting that she be declared a dependent of the court on January 20, 2016. The petition alleged that the jurisdiction and dependency were warranted because the Ragans were unable to meet J.H.'s emotional needs and unable or unwilling to have J.H. returned to their care. The petition was accompanied by a social worker's Detention Report, which noted that Seaquist visited the Ragans' home but was not allowed to speak with J.H. and that J.H. subsequently called Seaquist to say that she did not want to be adopted by the Ragans. The report found that reasonable efforts had been made to prevent or eliminate the need for removal, and recommended that J.H. be temporarily placed in the custody of the County. An arraignment hearing was held on January 21, 2016. The Ragans and Humbolt were represented by counsel and the court appointed counsel for J.H. The court adopted the interim findings and orders as recommended in the Detention Report, including that J.H. be temporarily placed in residential treatment, that the Ragans be provided parental education and counseling to facilitate reunification efforts, and that the Ragans be permitted to visit J.H. at least twice a week. A detention hearing was held on January 25, 2016 and the court again adopted the interim findings and orders consistent with its previous interim order.

A jurisdiction hearing was held on February 10, 2016. Plaintiffs argued that the Department's "lack of cooperation and neglectful actions have caused delays and further harm to the minor," and asserted that Child Welfare Services ("CWS") "exacerbated [J.H.'s] conflict with the Ragans, continued to destabilize her mental health and facilitated her distortion of her circumstances." RJN, Ex. G. On February 23, 2016, a social worker filed an Amended Jurisdictional Report which stated, per the parties' stipulation, that despite their best efforts, the Ragans could not meet J.H.'s emotional needs. On February 24, 2016, the court assumed jurisdiction based on the information in the Amended Jurisdictional Report.

A three-day contested dispositional hearing began in late June 2016 and ended in July 2016. In their pretrial statement, the Ragans argued that their expert's evaluation confirmed that the guardians were not neglectful or abusive and that the involvement of CWS exacerbated J.H.'s conflict with the Ragans, continued to destabilize her mental health, and facilitated her distortion of circumstances. At the hearings, the Ragans called multiple witnesses. On July 18, 2016, after hearing all of the evidence and argument, the court adopted the findings and orders of the social worker's report with minor modifications. The court declared J.H. a dependent of the state and ordered the Department to provide family reunification services to the Ragans. It ordered a six-month review hearing on January 17, 2017. Shortly thereafter, the Ragans appealed the court's declaration of dependency and removal of J.H. from their custody. In November 2016, the California Court of Appeal dismissed the appeal for failure to file an opening brief.

On September 30, 2016, Plaintiffs filed suit in federal court against Humbolt County, Connie Beck, Keri Schrock, Ann Seaquist, and Dolores Hickenbottom. Plaintiffs bring claims under 42 U.S.C. § 1983 for (1) interference with familial relations, (2) retaliation, (3) unlawful seizure, (4) violations of procedural and substantive due process, and (5) *Monell* liability, as well as various state law claims.

III. LEGAL STANDARD

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). While "detailed factual allegations" are not required, a complaint must have sufficient factual allegations to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible "when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. This standard asks for "more than a sheer possibility that a defendant acted unlawfully." *Id*. The determination is a context-specific task requiring the court "to draw on its judicial experience and common sense." *Id*. at 679.

A motion to dismiss a complaint under Rule 12(b)(6) of the Federal Rules of Civil

Procedure tests the legal sufficiency of the claims alleged in the complaint. *See Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). Dismissal under Rule 12(b)(6) may be based either on the "lack of a cognizable legal theory" or on "the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). When evaluating such a motion, the court must accept all material allegations in the complaint as true, even if doubtful, and construe them in the light most favorable to the non-moving party. *Twombly*, 550 U.S. at 570. "[C]onclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim." *Epstein v. Wash. Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996); *see also Iqbal*, 556 U.S. at 678 ("threadbare recitals of the elements of the claim for relief, supported by mere conclusory statements," are not taken as true).

IV. DISCUSSION

In their motion to dismiss, Defendants argue that Plaintiffs claims are barred by issue preclusion, the family law exception to jurisdiction, and the *Younger* abstention doctrine. While Defendants correctly intuit that this action is ill-suited for federal court, the more relevant abstention doctrine appears to be *Rooker-Feldman*, given that Plaintiffs filed this lawsuit after the state court rendered its judgment and complain of injuries stemming from that judgment.[2] The claims that are not barred by *Rooker-Feldman* fail for other reasons.

A. *Rooker Feldman*

The *Rooker–Feldman* doctrine precludes federal courts from hearing "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). It prohibits direct appeals from the final judgment of a state court and "may also apply where the

[2] While Defendants do not raise the applicability of *Rooker-Feldman*, courts may invoke the doctrine *sua sponte* because it relates to subject matter jurisdiction. *See Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir. 1986).

parties do not directly contest the merits of a state court decision, as the doctrine prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a *de facto* appeal from a state court judgment." *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008). In short, "[i]f a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, *Rooker–Feldman* bars subject matter jurisdiction in federal district court. If, on the other hand, a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker–Feldman* does not bar jurisdiction." *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003).

"[A] federal district court dealing with a suit that is, in part, a forbidden *de facto* appeal from a judicial decision of a state court must refuse to hear the forbidden appeal. As part of that refusal, it must also refuse to decide any issue raised in the suit that is 'inextricably intertwined' with an issue resolved by the state court in its judicial decision." *Doe v. Mann*, 415 F.3d 1038, 1043 (9th Cir. 2005). The *Rooker–Feldman* doctrine applies not only to final state court orders and judgments, but to interlocutory orders and non-final judgments issued by a state court as well. *Doe & Assoc. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001).

Here, Plaintiffs' suit is barred, in part, by the *Rooker-Feldman* doctrine. Plaintiffs claim their due process rights were violated because they were "never given a fair opportunity to retain and maintain custody of J.H." and prevented from "receiving a fundamentally fair, orderly, and just judicial proceeding." Comp. ¶ 97, 101. Plaintiffs also claim a Fourth Amendment violation for the "wrongful taking of a minor" because Defendants "caused [J.H.] to be removed from [their] legal custody." *Id*. ¶ 105. These claims invite review of the juvenile dependency proceeding.

Plaintiffs' also allege that Defendants presented fabricated evidence to the court and refused to provide exculpatory evidence throughout the dependency proceedings. Comp. ¶¶ 78, 99. These allegations raise issues that are "inextricably intertwined" with the juvenile dependency proceeding. *See, e.g., Ismail v. County of Orange*, 2012 WL 3644170 (C.D. Cal. June 11, 2012). While there is an exception to the *Rooker–Feldman* doctrine for allegations of extrinsic fraud,

Plaintiffs do not appear to allege extrinsic fraud here. Extrinsic fraud is "conduct which prevents a party from presenting his claim in court." *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981); *see also Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139 (allegations of extrinsic fraud require "the investigation of a new case arising upon new facts"). Plaintiffs raise the same factual disputes previously raised in the dependency proceeding. *See, e.g.*, RJN. Exs. G, S and L. They do not allege that Defendants committed any fraud that they were prevented from challenging in the proceedings. *Contra Kougasian*, 359 F.3d at 1138. Thus, Plaintiffs' allegations do not fit within the extrinsic fraud exception.

It is immaterial that the Ragans bring "an indirect challenge based on constitutional principles." *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003); *see also Sample v. Monterey Cnty. Family & Children Servs.*, 2009 WL 2485748 at *3 (N.D. Cal. 2009) ("Although [plaintiff] asks for monetary damages, she would only receive a damage award if this court determined that the Dependency Court's decisions pertaining to the custody of her children—including any review or authorization of defendants' actions—were in error. Accordingly, to evaluate her claims and grant her the relief she requests, this court would have no choice but to review and reject the state Dependency Court's decision, including its acceptance of Monterey County's removal actions."); *Grimes v. Alameda County Social Servs.*, 2011 WL 4948879, at *3 (N.D. Cal. Oct. 18, 2011) ("Even if plaintiff were to abandon his request for the return of his children and instead pursue only money damages, his claims still would require review of the relevant state-court decisions. Such review is barred. Even though plaintiff nominally asserts claims for alleged civil rights violations, his pleading is de facto an improper collateral attack on unfavorable state-court rulings."). To the extent Plaintiffs' first, third, and fourth causes of action are based on errors in the juvenile dependency proceeding, they are barred and dismissed without leave to amend.[3]

[3] The determination that subject matter jurisdiction is inappropriate is only bolstered by the fact that the state judgment at issue involves a custody matter. "The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." *Ex parte Burrus*, 136 U.S. 586, 593–94 (1890).

Not all of Plaintiffs' constitutional claims, however, are barred by the *Rooker-Feldman* doctrine. *See Noel,* 341 F.3d at 1156 ("[W]here the federal plaintiff does not complain of a legal injury caused by a state court judgment, but rather of a legal injury caused by an adverse party, *Rooker—Feldman* does not bar jurisdiction.") For example, Plaintiffs allege that Defendants' violated their First Amendment rights by retaliating against them. While they allege this retaliation occurred "through the juvenile dependency court" and rely on some of the same facts discussed above, *see, e.g.*, Comp. ¶¶ 105-106, they appear to limit their claim to events preceding the juvenile dependency proceedings, primarily Defendants' conduct during the agency adoption process. *See id*. ¶ 93(a)-(h). Their *Monell* claim is similarly pleaded. *See id*. ¶ 113(a)-(e).[4]

Moreover, some of their federal claims are only barred in part. Read with the requisite liberality, Plaintiffs' Fourth Amendment and familial interference claims appear vaguely based, in part, on allegations regarding J.H.'s initial seizure, *see, e.g., id*. ¶¶ 78, 104, which are also not inextricably intertwined with the juvenile dependency proceedings. *See, e.g., Ybarra-Johnson v. Arizona*, 2014 WL 583358 (D. Arizona Nov. 12, 2014) ("[W]hile this Court is precluded from assessing whether Plaintiff's parental rights should have been terminated, *Rooker-Feldman* does not bar Plaintiffs' claims concerning whether the initial seizure of the children and subsequent CPS investigation was conducted in a reasonable and unbiased fashion."). To the extent Plaintiffs' claims are based on the Defendants' unlawful conduct, separate and apart from any legal errors committed in the juvenile dependency proceedings, they are not barred by *Rooker-Feldman* and are thus discussed below. *See Noel,* 341 F.3d at 1164.

B. Remaining Federal Claims

1. Familial Association

[4] Although Plaintiffs' due process claim includes some stray allegations regarding delays in the adoption process, the injury alleged is that, "[a]s a result of [] Defendants' actions, Plaintiffs [were] never given a fair opportunity to retain and maintain custody of J.H." Comp. ¶ 101. Accordingly, it is difficult to see how their due process claim is anything but "inextricably intertwined" with the state juvenile proceedings. That claim is thus dismissed in its entirety without leave to amend.

Plaintiffs allege that Defendants violated their right to familial association in part by unlawfully seizing J.H. without proper justification or authority and without probable cause, exigency, or court order. They bring this cause of action against all individual defendants. Defendants argue that they are protected by the doctrine of qualified immunity because prospective adoptive parents do not have a clearly established constitutional right to familial association.

Government officials who perform discretionary functions are generally immune to liability for civil damages "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). In deciding whether to grant qualified immunity, a court must determine (a) whether the alleged facts make out a constitutional violation, and (b) whether the constitutional right at issue was clearly established at the time of the violation. *Saucier v. Katz*, 533 U.S. 194, 201 (2001).

Plaintiffs have failed to show that their constitutional rights to familial association were "clearly established." Indeed, the Ninth Circuit recently held in an unpublished opinion that, even if it could be established that foster parents were deprived of their custody of their foster child without notice or an opportunity to object, they could not demonstrate that their custody of their foster child was a liberty interest protected by the due process clause. *See Huk v. County of Santa Barbara*, 650 Fed. Appx. 365, 367 (9th Cir. May 17, 2016). It reasoned that, under California law, a social worker's removal authority is highly discretionary and not governed by objective and defined criteria, so foster parents are not entitled to the notice and grievance procedures, as a matter of federal constitutional right. The Ninth Circuit noted that nothing in the record would support a conclusion that appellants could be designated as "prospective adoptive parents" for constitutional purposes. In so finding, it distinguished *Elwell v. Byers*, 699 F.3d 1208, 1217 (10th Cir. 2012), which found a protected liberty interest where foster parents had cared for a child for "nearly his entire life and were on the verge of adopting him." Even if the facts here are more like *Elwell* than *Huk*, the factual record would then raise an issue of first impression regarding the

constitutional rights of "prospective adoptive parents." At minimum, the Ragans' constitutional rights to familial association are not "clearly established." Thus, Plaintiffs' claim based on the right to familial association is dismissed without leave to amend.

2. Retaliation

In support of their First Amendment retaliation claim, Plaintiffs allege that they made "repeated requests" for an agency adoption with access to AAP funding and that Defendants retaliated against them as a result of those requests, including by providing inaccurate information about agency adoption, threatening reunification with J.H.'s biological mother, claiming to have lost Plaintiffs' case file, telling J.H. that Plaintiffs were being investigated for abuse, and opening an investigation into abuse. They bring this cause of action against all individual defendants. To state a claim for retaliation for the exercise of constitutionally protected rights, a plaintiff must allege: (1) that protected conduct was a "substantial" or "motivating" factor in the defendant's decision; and (2) injury stemming from the allegedly retaliatory action. *See Resnick v. Hayes,* 213 F.3d 443, 449 (9th Cir. 2000). Here, Plaintiffs' allegations fall short.

As an initial matter, many of the allegations in the complaint refer generally to conduct by "Defendants" or "the County." Plaintiffs do not explain in sufficient detail which individual defendants violated Plaintiffs' First Amendment rights and how those rights were violated by any individual defendant. Plaintiffs allege they made their repeated requests to proceed with agency adoption to Schrock, but claim it was "the County" that told Plaintiffs they were ineligible for adoption, "the County" that claimed Plaintiffs' case file was lost, "the County" that claimed Plaintiffs denied access to J.H. during a visit, Seaquist who told J.H. that Plaintiffs were being investigated for abuse, and "the County" who informed Plaintiffs that they would be charged with neglect. Comp. ¶¶ 53, 58, 59, 62, 63. The complaint includes no specific allegations related to conduct by Hickenbottom or Beck. Moreover, Plaintiffs do not allege any facts to support their conclusion that their protected conduct was a "substantial" or "motivating" factor in any defendants' conduct. *Mt. Healthy City School Dist. Bd. of Educ. v. Doyle,* 429 U.S. 274, 287

(1977). Thus, Plaintiffs' claim for retaliation is dismissed with leave to amend. Once the factual and legal basis of this claim has been clarified, the extent of issue preclusion can be evaluated.

3. Fourth Amendment

Plaintiffs allege that J.H. was unlawfully seized without a court order and without probable cause in violation of their Fourth Amendment rights. Defendants argue that Plaintiffs lack standing to bring a Fourth Amendment unlawful search and seizure claim on behalf of J.H. A person does not generally have standing vicariously to assert the Fourth Amendment rights of another person. *See Moreland v. Las Vegas Metro. Police Dep't*, 159 F.3d 365, 369 (9th Cir.1998) ("[T]he general rule is that only the person whose Fourth Amendment rights were violated can sue to vindicate those rights."); *see also Osborne v. Cnty. of Riverside*, 385 F.Supp.2d 1048, 1052–53 (C.D. Cal. 2005). Claims of unlawful seizure advanced by parents "should properly be assessed under the Fourteenth Amendment standard for interference with the right to family association." *Wallis v. Spencer*, 202 F.3d 1126, 1137 n. 8 (9th Cir. 2000); *see also Belinda K. v. County of Alameda*, 2011 WL 2690356, at *7 (N.D. Cal. July 8, 2011). J.H.'s seizure does not implicate Plaintiffs' Fourth Amendment rights. Thus, this claim is dismissed without leave to amend.

4. *Monell* Liability

Plaintiffs assert a *Monell* claim against the County. Because Plaintiffs fail to allege any individual defendant committed a constitutional violation, their separate claim under *Monell* also fails. *See City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986) ("If a person has suffered no constitutional injury at the hands of the individual police officer, the fact that the departmental regulations might have authorized the use of constitutionally excessive force is quite beside the point."). In any event, Plaintiffs fail to allege a proper *Monell* claim.

A municipality may be liable under section 1983 when the enforcement of a municipal policy or custom was the moving force behind the violation of a constitutionally protected right. *Monell v. Dep't of Social Servs. of the City of New York*, 436 U.S. 658, 690, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). Generally, "the actions of individual employees can support liability against

a municipality under § 1983 only if those employees were acting pursuant to an official municipal policy." *Haines*, 2011 WL 6014459, at *4 (quoting *Webb v. Sloan*, 330 F.3d 1158, 1164 (9th Cir. 2003)). Even if there is no "official" policy, a plaintiff can allege liability based on employees' actions under two alternative theories: (1) "if an employee commits a constitutional violation pursuant to a long-standing practice or custom"; or (2) if "the person causing the violation has final policymaking authority." *Id.* (internal citations omitted). Examples of a "custom" include that of "inaction or omission, such as a failure to train, if the failure to train amounts to deliberate indifference of plaintiff's rights." *Id.*

Plaintiffs have insufficiently alleged a custom, policy, or practice to establish *Monell* liability.[5] They only plead actions related to their own experience. Moreover, Plaintiffs' allegations of causation are conclusory and do not make a causal connection between any custom, policy, or practice at issue and any particular violation of a constitutional right. Thus, Plaintiffs' claim is dismissed with leave to amend.

D. State Law Claims

The viability of Plaintiffs' claims under state law need not be reached unless and until there is a viable federal claim stated. *See* 28 U.S.C. § 1367(c)(3) (providing that a district court may decline to exercise supplemental jurisdiction where it "has dismissed all claims over which it has original jurisdiction"); *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 351 (1988) ("[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine-judicial economy, convenience, fairness, and comity-will point toward declining to exercise jurisdiction over the remaining state-law claims.").

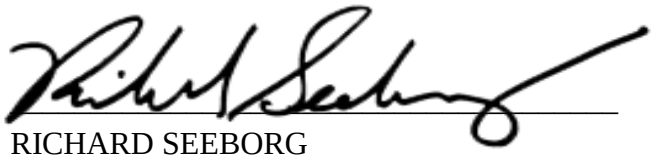
[5] To the extent the claim is based on a "failure to train" theory of *Monell* liability, the claim also fails. In order to establish that a municipality is liable under *Monell* for failure to train, plaintiffs must show that a particular training deficiency was so egregious that it "amount[ed] to deliberate indifference to the rights of persons with whom the police come into contact." *City of Canton v. Harris*, 489 U.S. 378, 388 (1989). Here, the complaint contains no allegations concerning the County's alleged failure to train. Plaintiffs do not allege what training the County employees received, do not indicate that any County policymaker was aware that the training was deficient, and, in fact, make no mention of training at all.

V. CONCLUSION

For the aforementioned reasons, Plaintiffs' complaint is dismissed with limited leave to amend. Any amended complaint shall include only the claims for which dismissal is granted with leave to amend and must be filed within 21 days. Plaintiffs are cautioned that any claims in their amended complaint that fail to comply with this order will be dismissed.

IT IS SO ORDERED.

Dated: March 6, 2017



RICHARD SEEBORG
United States District Judge